

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**HOLLY WRIGHT**

) OTA Case No. 18093805  
)  
) Date Issued: August 13, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Holly Wright

For Respondent: Rachel Abston, Senior Legal Analyst

N. ROBINSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Holly Wright appeals an action by the respondent Franchise Tax Board (FTB) on a proposed assessment of additional tax in the amount of \$1,845 and applicable interest for the 2014 tax year.

Appellant waived her right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant has demonstrated error in the proposed assessment, which is based on a federal determination.

**FACTUAL FINDINGS**

1. Appellant filed a 2014 California Resident Income Tax Return (Form 540).
2. FTB received federal audit information showing the IRS made adjustments to appellant’s federal return, increasing her income for unreported pension/annuity income of \$23,958, and disallowing a \$156 student loan interest deduction, a \$102 tuition and fees deduction, and \$386 of miscellaneous deductions.

3. On July 28, 2017, FTB issued a Notice of Proposed Assessment (NPA) that applied the federal adjustments to appellant's California return, resulting in a proposed additional tax of \$1,845 plus applicable interest.
4. On September 26, 2017, appellant protested the proposed additional tax by stating that in 2014 she cashed out "profit sharing monies" that had accrued for 15 years while she worked and lived in Florida. Appellant contends that since the profit sharing accrued when appellant was not a resident of California, California cannot tax these funds even though they were distributed to her while she was a California resident.
5. On June 20, 2018, FTB sent a letter to appellant responding to appellant's protest. FTB informed appellant that California taxes its residents on "all income from all sources," and that if appellant did not submit a revised Internal Revenue Service (IRS) report or other information by July 20, 2018, showing that the IRS had reduced or revised the assessed additional tax, FTB would affirm its NPA.
6. FTB did not receive any additional information from appellant.
7. FTB affirmed its NPA by issuing a Notice of Action on August 10, 2018.
8. In a letter postmarked September 10, 2018, appellant requested an extension of time to file an appeal after suffering serious injuries in a motor vehicle accident.
9. The Office of Tax Appeals (OTA) accepted appellant's September 10, 2018 letter as a timely appeal and granted appellant's extension request.
10. On December 24, 2018, OTA sent a letter to appellant informing her that her opening brief had not been received and that FTB shall have until February 22, 2019, to file its opening brief.
11. After FTB filed its opening brief, OTA informed appellant that she would have until March 30, 2019, to file her reply brief. Appellant did not respond, and OTA concluded that briefing was complete and the matter would be submitted for decision on the written record.

### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731;

*Appeal of Hutchinson* (82-SBE-121) 1982 WL 11798.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state.” R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as “all income from whatever source derived,” including pension income. Further, Section 17501 incorporates IRC section 408(d) to include any pension distribution income. Because of California’s conformity with IRC sections 61 and 72, California residents who receive distributions from a retirement plan must include these amounts in taxable income for California purposes, even if the source of the income is from outside California and the retirement plan was funded before the taxpayer became a California resident.<sup>1</sup>

Here, it is undisputed that while a resident of California in 2014, appellant received a \$23,958 distribution from a profit sharing fund but did not report this amount as income. Despite being given several opportunities to provide additional information to show why the federal adjustment to her reported taxable income was erroneous, appellant provided no additional information. Thus, we have no legal basis to overturn FTB’s proposed assessment of additional tax.

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<sup>1</sup> In the NPA, FTB disallowed appellant’s deductions for tuition and fees, student loan interest and miscellaneous deductions. Appellant has not challenged those disallowances.

HOLDING

Appellant has not established error in FTB's proposed assessment, which is based on a final federal determination.

DISPOSITION

FTB's proposed assessment for the 2014 tax year is sustained.

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*Neil Robinson*

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Neil Robinson  
Administrative Law Judge

We concur:

DocuSigned by:

*Tommy Leung*

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Tommy Leung  
Administrative Law Judge

DocuSigned by:

*John O Johnson*

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John O. Johnson  
Administrative Law Judge